Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Presubscribed Interexchange Carrier Charges	)	CC Docket No. 02-53
	)	CCB/CPD No. 01-12
	)	RM-10131
	)	

JOINT REPLY COMMENTS OF WORLDCOM AND THE COMPETITIVE TELECOMMUNICATIONS ASSOICIATION

WorldCom, Inc. ("WorldCom") and the Competitive Telecommunications Association ("CompTel") respectfully submit these comments, jointly, in response to the initial comments filed pursuant to the Federal Communications Commission's ("Commission") Notice of Proposes Rulemaking ("*Notice*"), released on May 20, 2002 in the above referenced proceeding.

INTRODUCTION

As the National Association of State Utility Consumer Advocates ("NASUCA") expressed, in accord with views expressed by the Commission and other parties, "[f]rom the consumer and consumer advocate perspective, the ability to freely switch IXCs is one key benefit of the last twenty years of telephone regulation . . . Barriers that make switching more expensive constrain the benefits of a competitive market."[1] The ability of

[1] NASUCA, p. 2. *See also* Notice, para. 12 ["This Commission relies on the fiercely competitive nature of the long distance market to ensure reasonable prices for consumers. The ability of end users to change carriers easily and for any reason gives long distance carriers an incentive to provide their services at

consumers to switch carriers freely has been possible despite the $5 safe harbor because IXCs have historically been reimbursing consumers for these charges. But as SBC acknowledges, "[c]ompetition in the interstate long-distance market is more intense than ever . . . and prices have steadily declined."[2] IXCs can no longer afford to cover these excessive costs, nor should it be expected of them.[3] The PIC change charge was allowed because it was reasonable for carriers to recover *costs* associated with changing an end-user's presubscribed IXC.[4] As the Association of Communications Enterprises ("ASCENT") notes, it was never the Commission's intent to establish a profit center for ILECs.[5]

The ILECs claim that the impact of these fees on consumers is insignificant. The Association for Telecommunications Professionals in Higher Education ("ACUTA") demonstrates the fallacy of this argument by pointing out that colleges and universities have received bills for "$75,000, $100,000 and more" simply for making PIC changes on lines owned by the institution.[6] Moreover, as the Office of the Attorney General of the State of Texas states, "[t]he idea that a carrier could capture and retain business through an exorbitant PIC change charge is not unheard of and appropriate steps must be taken to avoid that result."[7] "With the increase in competition for long distance service, it is

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reasonable rates and to maintain customer-friendly business practices."]; *See also* WorldCom, pp. 3-4; *See also* AT&T, p.2.

2 SBC, p. 2.

3 The fact that IXCs incur other costs in acquiring a customer does not justify an excessive PIC change charge, as some ILECs argue. The IXCs have some control over the other costs associated with the acquisition of customers and, since those costs must be recovered through competitive rates, have an incentive to keep these expenses cost-efficient.

4 *See* Notice, para. 3, *citing to Investigation of Access and Divestiture Related Tariffs,* CC Docket No. 83-1145, Phase I, Memorandum Opinion and Order, 55 Rad. Reg. 2d (P&F) 1422, App. B at 13-5 (Apr. 27, 1984)(1984 Access Tariff Order); 1987 Access Tariff Order, 2 FCC Rcd. at 1446, para. 274, (*emphasis added*).

5 ASCENT, p. 2.

6 ACUTA, p. 2.

7 Office of the Attorney General of Texas, p. 2.

arguable that the PIC change charge should be kept as low as possible to prevent that price competition from being artificially inhibited."[8]

Significantly, ILECs did not provide sufficient cost data to support their claims that $5 is a reasonable fee for this function.[9] They merely claim that there is no evidence of a reduction in costs since the establishment of the safe harbor. But in fact, in a full proceeding, which culminated in the *MCI Order*, where parties had full opportunity to comment and justify costs, the Commission found persuasive evidence that the costs had drastically been reduced and were significantly lower than the $5 safe harbor.[10] ILEC claims that subsequent changes in the industry have increased costs associated with a PIC change are likewise untenable. ILECs appear to be including costs they already recover from IXCs via contractual arrangements or costs associated with the ILECs' own service offerings.

The Commission should ensure ILECs do not obtain double or extraneous recovery of costs through the PIC change charge. As WorldCom stated in its initial comments, the Commission should determine the costs associated with the execution of the change in the switch, using the most technologically efficient means, and not allow ILECs to charge a higher fee for PIC changes.[11]

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[8] *Id.*

[9] Verizon's comparison to intraLATA rates is not useful. For example, the Massachusetts Department of Public Utilities' (MDPU) approval of Verizon's $5 charge for changes in a customer's intraLATA service provider was based on this Commission's safe harbor policy. *Investigation by the Department as to the Propriety of the Rates and Charges set forth in Tariffs M.D.P.U. Nos. 10 and 15*, D.P.U. 96-106-A, pp. 22-3 (Apr. 9, 1998). The cost study submitted by Hot Springs Telephone Company, claiming over an hour and a half of personnel time to process one PIC change, demonstrates the need of the Commission to evaluate the efficiency of the process used. *See*, Hot Springs, Att. A.

[10] *See* MCI Order, 15 FCC Rcd. 9328, paras. 7-9.

I. ILECs Should Not Be Permitted To Obtain Double Recovery For Systems Costs.

In their comments, the ILECs include costs for system management and IXC interface in their discussion of costs associated with the automated processing of a PIC change.[12] This is typically referred to as the Customer Account and Record Exchange ("CARE") process, and includes the communication with the IXCs regarding customer connects and disconnects. However, a number of ILECs charge WorldCom for account management and for down stream IXC notification of customer account status through contractual arrangements with WorldCom, separate from the PIC change charges assessed on end-users. WorldCom spent well over $5 million on CARE reporting charges specifically to cover the cost of PIC change reporting and ongoing changes to customer account status.[13] WorldCom represents only a small portion of the total IXC community, whom Comptel represents, with whom the ILECs contract for these CARE reporting services.

The Commission should ensure that ILECs do no use their monopoly control over the PIC process and PIC information to obtain double recovery of system costs associated with the PIC change process. ILECs that separately charge an IXC for a particular function should not be permitted to include the cost of that function in their cost justification for the PIC change charge. Alternatively, if the costs associated with a particular function are recovered through the PIC change fee, the ILECs should be precluded from separately charging the IXCs for that function.

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[11] WorldCom, pp. 7-8

[12] *See* SBC, pp. 5-6; CBT, p. 2; Verizon, p. 5 and Att. D; Sprint, pp. 7 & 9.

[13] It is unclear what portion of IXC contribution for CARE management is applied to headcount, maintenance, and other ancillary charges addressed in the LEC comments.

II. The Commission Should Evaluate The Extent To Which Orders Process Via Direct Contact With The Customer Are The Result Of The ILEC's Role As Executing Carrier.

A number of ILECs claim that a significant portion of PIC changes result from consumers directly contacting the ILEC to request the change, which requires the more costly manual processing of the order.[14] SBC, for example, claims that ILEC initiated PIC changes account for the majority of the PIC changes it processes.[15] These claims must be carefully scrutinized. The vast majority of PIC changes to WorldCom result from WorldCom submitting an order directly to the ILECs' automated systems.

One of the most significant changes in the industry over the last few years, however, is that the ILECs are facing competition in the intraLATA toll market and are beginning to compete in the interLATA toll market. As a consequence, ILEC representatives are taking PIC change orders for their own or affiliated services, and therefore presumably increasing the overall number of manually processed PIC changes by the ILECs.[16] Nevertheless, when an ILEC is taking an order for its own, or its affiliate's, services the ILEC is incurring costs as a submitting carrier, not an executing carrier. It is cost associated with the sale of service. Thus, the cost should not be recovered through the PIC change charge.

As WorldCom discussed in its initial comments, its representatives incur costs associated with the communication with new customers, performance of order entry functions, obtainment of verification of the customer's preferred carrier, and the

[14] Sprint claimed these were half of its PIC activity. Sprint, p. 8.
[15] SBC, p. 4. *See also*, NTCA, p.2.
[16] Verizon has 8.2 million long-distance customers, with 800,000 customer additions in the first Quarter of 2002 alone. Verizon Investor Quarterly 1Q 2002, p. 2, Apr. 23, 2002. SBC ended the year 2001 with 4.9 million long distance lines in six states. In the fourth quarter alone it had added 277,000 lines. SBC Communications, Inc., Investor Briefing, *Long Distance Growth*, p. 7, Jan. 24, 2002.

submission of the PIC change orders to the executing carrier's systems for processing.[17] WorldCom, and other IXCs not affiliated with an ILEC, must recover these costs from its provision of service to its customers alone. It has no means for it to distribute these costs to the IXC industry as a whole. Similarly, ILECs should not be permitted to recoup these costs through the fees they impose on competitors and their customers as an executing carrier.

III. ILECs Should Not Be Permitted To Recover Costs Associated With Their PIC Freeze Services Through A Higher PIC Change Charge

ILECs claim that the costs of carrier changes have increased as a result of the implementation of their PIC freeze services. As WorldCom previously stated, the costs associated with the ILECs' PIC freeze services should be recovered separately, and only from those consumers who actually subscribe to the service. This is consistent with the Commission's requirement that "carriers soliciting preferred carrier freezes must provide . . . an explanation of any charges associated with the preferred carrier freeze service."[18]

ILECs argue that customers should not have to pay for PIC freeze protection. Yet, if the ILECs recover the costs of their PIC freeze offering through the carrier change fee *all* consumers will be forced to bear the costs of this service. While some consumers may find it to be a beneficial service, others may wish to maintain ease and efficiency in their ability to change providers or simply may find the benefit not worth the cost. As the Commission recognized, "… because preferred carrier freezes by their very nature

[17] WorldCom, p. 4
[18] *In the Matter of Implementation of the Subscriber Carrier Selection Change Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers*

impose additional burdens on subscribers, freezes should only be placed as a result of consumer choice."[19] Likewise, assuming the ILECs' claims are accurate, that PIC freeze offerings generate significant costs, these costs should only be imposed on the consumers who realize the benefit of that protection.

The threat that ILECs may discontinue offering this service if they were not permitted to recover the cost as part of the PIC change fee is disingenuous since they can charge a separate fee for this service. Additionally, a nominal fee for establishing a PIC freeze on the account to cover costs will assist in preventing freezes from being inappropriately applied to an account.[20] It will alert consumers to the fact that there is a freeze on the account, possibly before a customer's change request is denied or delayed due to an unwanted freeze on his or her account.

IV. ILECs Have Not Identified Costs Associated With Unauthorized Conversions That Are Justifiably Recoverable Through The PIC Change Charge.

ILECs claim that costs of administering customer complaints of unauthorized conversion should be recoverable through the PIC change charge. Most of the ILECs did not specifically identify these purported costly duties. SBC, however, claims that ILECs must notify the affected carriers, return the customer to the carrier of choice, notify the customer of their right to file a complaint, remove the disputed charges from the

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Long Distance Carriers, Second Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 94-129, FCC 98-334, para. 122; *See also* 47 CFR § 64.1190(d)(1)(iii).

[19] *Id.*, para. 100.

[20] *See* MCI, et al. vs. U S West Communications, Inc. *Before the Public Utilities Commission of the State of Colorado*, Decision Nos. R99-1362 (1999) and C00-513 (2000)[U S West was found to have extended its customers' PIC freeze on their interLATA account to their intraLATA account, with U S West as the chosen intraLATA carrier, without the customers' knowledge or consent.]

customer's bill and bill the alleged unauthorized carrier.[21] SBC and other ILECs also refer to costs associated with investigating these complaints.

First, as discussed previously, the notification to the affected carriers is accomplished through the CARE process for which most ILECs already obtain compensation from the IXCs. Second, the ILEC is compensated for switching the customer back to the customer's carrier of choice by the alleged unauthorized carrier pursuant to the ILEC's tariff.[22] Third, all carriers – executing, authorized, and unauthorized carriers – contacted by a customer with a complaint of an unauthorized conversion are required to notify the customer of the customer's right to file a complaint. This is not unique to the ILEC's role as executing carrier. Fourth, the federal rules do not require the executing carrier to remove charges from a complaining customer's bill. If an ILEC is performing this function it is doing so pursuant to a billing and collection agreement it has with the relevant carrier. Costs associated with functions resulting from a private agreement should not be borne by all consumers of long distance service. Finally, in its *Third Report and Order*, the Commission further clarified the role of the executing carrier with regard to the investigation of unauthorized conversions:

> "We note SBC's second clarification request regarding the executing carrier's role in investigating slamming allegations was made in response to the Commission's prior liability rules, which were superceded by the liability rules adopted in the *First Reconsideration Order*. The procedures we adopted in the *First Reconsideration Order* provide that "disputes between alleged slamming carriers, authorized carriers, and subscribers now will be brought before an appropriate state commission, or this Commission in cases where the state has not

[21] SBC, p. 9

[22] See e.g., Pacific Bell Telephone Company, Tariff F.C.C. No. 1, 13.3.3(B)(7)(c) ["The alleged unauthorized carrier will be billed the appropriate PIC Change Charge(s) for the alleged unauthorized change and the appropriate PIC Change Charge(s) to change the customer to their preferred IC . . ."]

> elected to administer these rules, rather than to the authorized carriers, as adopted in the Section 258 Order."[23]

Moreover, under federal rules it is the alleged unauthorized carrier that must respond, with proof of verification of authorization, to the relevant government agency handling the unauthorized conversion complaint.[24] If the ILEC is responding to an inquiry from a governmental agency regarding the change in the consumer's provider it is likely that there is a question as to whether the switch was initiated by the alleged unauthorized carrier or by the ILEC. If the switch was unauthorized and initiated by the ILEC, then the ILEC is not an innocent party.

V. Price Cap Rates Are Irrelevant To This Proceeding

There is no merit to Verizon's contention that the Commission should increase price cap rates at the same time that it reduces or eliminates the PIC-change charge safe harbor. The Commission determined in the *LEC Price Cap Order* that the initial price cap rates were a "reasonable starting point for price caps."[25] Moreover, any linkage between presubscription charges and rates for services subject to price caps was severed in the *LEC Price Cap Order* when the Commission made the decision to hold presubscription services outside price caps.[26] Pursuant to the *LEC Price Cap Order*,

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[23] *See In the Matter of Implementation of the Subscriber Carrier Selection Change Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers Long Distance Carriers*, Third Report and Order and Second Order on Reconsideration, CC Docket No. 94-129, para. 86 (2000).

[24] 47 CFR § 64.1150(d).

[25] *Policy and Rules Concerning Rates for Dominant Carriers*, Second Report and Order, 5 FCC Rcd 6786, 6816, para. 241 (1990) (LEC Price Cap Order).

[26] LEC Price Cap Order, para. 195.

presubscription and other excluded services are regulated on a stand-alone basis through "conventional tariff review." [27]

CONCLUSION

The Commission should act expeditiously in ruling that the ILECs' PIC change charge be a rate that reflects the cost of the most technologically efficient process.

Respectfully Submitted,

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July 1, 2002

[27] *Id*. *See also Policy and Rules Concerning Rates for Dominant Carriers*, Report and Order and Second Further Notice of Proposed Rulemaking, 4 FCC Rcd 2873, 3229, para. 742.

CERTIFICATE OF SERVICE

I, Lonzena Rogers, do hereby certify that on this first day of July, 2002, I have caused a true and correct copy of the foregoing Joint Reply Comments of WorldCom and CompTel in the matter of CC Docket No. 02-53 to be served electronically, US first class mail, postage prepaid, on the following.

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